

LAW ENFORCEMENT OFFICERS'

FIELD GUIDE

TO
THE LIQUOR CONTROL CODE

AND
ADMINISTRATIVE RULES



1999

Michigan Department of Consumer and Industry Services
Liquor Control Commission
7150 Harris Drive, PO Box 30005
Lansing, Michigan 48909

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ADMINISTRATIVE RULES
OF THE COMMISSION

1999

Michigan Liquor Control Commission
State Secondary Complex
7150 Harris Drive
Post Office Box 30005
Lansing, Michigan 48909
(517) 322-1400

TABLE OF CONTENTS

INTRODUCTION	i-iii
I. VIOLATION REPORTS	
Sample LC-600 form (front)	2
How to complete front of form	3
How to complete back of form	4
Sample LC-600 form (back)	5
II. LIQUOR LAWS & RULES	
A. Underage Persons (Minors)	
State Constitution (Sale or giving to)	8
State Law	8
Sale or giving to minors	8
Illegal possession by minors	12
Detaining minors for ID	12
MLCC Rules (Under-18 workers)	13
Notes/Report Tips	14
Decoy Operations	17
B. Intoxicated Persons	
State Law & MLCC Rules	18
Sale to, loitering by	18
Notes/Report Tips	19
C. Hours of Sales	
State Law (Hours, Sunday permits)	20
MLCC Rules (Summary of hours)	22
Notes/Report Tips	23
D. Prohibited Conduct *All Licensees	
MLCC Rules	25
(Annoying, soliciting, fighting)	25
(Narcotics, gambling)	25
(Sale of unauthorized liquor)	26
(Sale to unauthorized sellers)	27
Notes/Report tips	27

* On-Premise Licensees only	
State law (Removing drinks)	28
MLCC Rules	28
Dance-entertainment permits	29
Nudity	30
Sex acts and TV, film of	30
Soliciting drinks, 2-for-1 sales	31
Report Tips	32
* Off-Premise Licensees only	
MLCC Rules	33
Open containers, consumption	33
Delivery to minors	34
Report Tips	34
E. Other Requirements *All licensees	
State Law (Premises inspection)	34
MLCC Rules	
Illegal acts, owner convicted	35
Cooperation with officers	36
Display of license, permits	37
Suspension of license	37
F. Contests & Tournaments	
MLCC Rules (Prizes, alcohol use)	38
G. Special Licenses	
State Law (Definitions)	39
III. GENERAL INFORMATION	
A. Penalties for Violations	
State Law (Penalties)	41
B. Law Enforcement Interest	
State Law (Prohibits ownership)	44
C. Import of Liquor	
State Law (Limits amount)	45
MLCC District Offices	<i>inside back cover</i>

INTRODUCTION

To all law enforcement officers:

The Michigan Liquor Control Commission (MLCC) has prepared and revised this booklet to assist you in the uniform enforcement of the Michigan Liquor Control Code and corresponding MLCC Administrative Rules.

The Michigan Liquor Control Code (PA 58 of 1998) requires that all sheriffs and their deputies, constables, marshals, members of municipal and township police departments, the Michigan State Police and MLCC investigators enforce the provisions of the statute and Administrative Rules promulgated under the law. To help support this important obligation, state law directs 55% of all retail liquor license and renewal fees collected in Michigan be returned to local governments for enforcing the Liquor Control Code (LCC) and MLCC Rules.

All persons who sell or distribute alcoholic beverages in Michigan are required by law to be licensed by the MLCC, to conform to the provisions of the LCC and rules governing alcoholic beverages sales, and to cooperate with police officers and MLCC investigators. These responsibilities also extend to the employees of a licensee, and to all stockholders and officers of a corporation that may hold a liquor license.

State law allows action to be taken against a licensee both in court and before the Liquor Control Commission for an alleged violation of the Liquor Control Code.

Every violation of the LCC or the MLCC Rules committed on the licensed premises that results in the conviction of a licensee (or their agents or employees) should be reported to the MLCC as soon as possible, as should any criminal conviction for any offense of a licensee or employee. A sample of the MLCC Violation Report and instructions on how to complete it are included on pages 2-5 of this booklet.

Law enforcement officers should understand that the MLCC enforces the law only in regard to persons and corporations (and their agents and employees) who possess a valid liquor license in Michigan. The Commission, for example, does not enforce the laws regarding persons who sell alcoholic beverages without a license (such as party hosts who charge admission and serve alcoholic drinks) - even though such activities are serious violations of the Liquor Control Code.

This handbook is intended to provide a field reference for liquor violations that are most likely to be observed by police officers in the normal pursuit of their duties. It is also designed to aid in preparing Violation Reports for administrative hearings before the MLCC. In order to keep this booklet pocket-sized, we could not include all situations that might be encountered by police officers. The LCC and the MLCC Rules, as well as local ordinances, should be consulted when a violation is suspected. The MLCC and its staff are ready to assist law enforcement officers in any way possible in their efforts

to ensure compliance with the LCC and MLCC Rules. By maintaining a close liaison with each other, police and MLCC personnel can more effectively enforce the provisions of the law governing the sale and distribution of alcoholic beverages in Michigan. This Field Guide has been prepared with that goal in mind.

The Michigan Liquor Control Commission



I. Violation Reports


The MLCC provides a standard Violation Report (Form LC-600) for its own staff and for law enforcement agencies to use when submitting licensee violations.

All Violation Reports to the MLCC **must** be submitted on the LC-600 form. However, police should be aware that licensees are given copies of the Violation Report, along with other documents (such as police reports) submitted, prior to a hearing. Therefore, confidential information should not be included with materials sent to MLCC.

Violation Reports sent to MLCC should include the following information and facts:

[From the Liquor License]

** License Number, Business ID, File Number **

 Name and address of the licensee (the individual, partners, or the corporate/ Limited Liability Company (LLC) name if a corporation/ LLC holds the liquor license). Be sure to include the name of the **county**.

NOTE: In the case of corporate/ LLC licensees be careful to show the corporate/ LLC name - not the name of an individual. This information appears on the liquor license which the licensee or employee must provide for your examination upon request.



Michigan Department of Consumer & Industry Services

LIQUOR CONTROL COMMISSION (LCC)

7150 Harris Drive

P.O. Box 30005

Lansing, Michigan 48909-7505

Phone (517) 322-1390 ~ FAX (517) 322-6347

VIOLATION REPORT

(Authorized by P.A.58 of 1998)

* Officers Please Obtain This Information From The License *

License No. SDM 10-03224-11

Business ID 14998

File # L - 16649

(THIS INFORMATION NOT AVAILABLE ON LICENSE UNTIL 5/1/99)

1. Name of Licensee Smith's Quick-Mart 2. Doing Business As Convenience Store

3. Mailing Address (street, city, zip code) 444 Highlander Way, Howell 48843

4. Township _____ 5. County Livingston

6. Type of License(s) & Permit(s) SDM - Valid 1999-2000

7. Date of Violation: Saturday April 17, 1999 X
(DAY) (DATE) (AM or PM)
(HOUR)

8. Violation Type: X Minor
_____ Intoxicated Person _____ After hours sales/consumption _____ Gambling
_____ Fighting (must be inside licensed premises) _____ Controlled Substances
_____ Failure to Cooperate _____ Prohibited Conduct OTHER: _____

if MINOR: Birth date 3-20-81 Was this a DECOY ? Yes / No NO If no, you MUST answer below:

IF above minor violation was not a decoy describe Enforcement Action Taken: Alcohol recovered from minor, minor taken to Livingston County Sheriff Dept. where parents were called and appearance ticket was issued.

COPY OF APPEARANCE TICKET MUST BE ATTACHED

9. Submit Report Below or Indicate Attached Report # _____

On Saturday, April 17, 1999 at 12:30 AM, Officers Klein and Myers, both uniformed Livingston County Police Officers, working in a fully marked police vehicle, were sitting across the street from the above licensed convenience store observing the activities within the store using binoculars. The officers observed a vehicle pull into the lot, two young appearing subjects exit the vehicle and enter the store. The officers watched as the taller and heavier of the two subjects went to the beer cooler and removed a six-pack of beer. This subject then went to the counter, paid for the beer then exited the store carrying the beer. He then reentered the vehicle as the driver. The other subject entered the vehicle as the passenger. Before the vehicle could back up, the officers pulled their police car in behind the suspect vehicle, blocking its path.

The subject the officers observed purchasing the beer was identified as DOE, Bruce Ball, white male DOB 3-20-81, age 18. The six-pack of beer was recovered from the front seat of the vehicle. The minor stated that he did in fact purchase the beer and that the clerk had not asked for identification. The officers took DOE back into the store and informed the clerk that she had sold to a minor. The clerk was identified as, McCutcheon, Carol, a white female, DOB 10-12-49. The clerk stated that she was busy and forgot to ask for identification. McCutcheon was issued a city of Howell Ordinance #12345 violation for selling alcohol to a minor. The officers took DOE and the beer to the Livingston County Sheriff department where they notified his parents. DOE was charged with minor in possession and a copy of the appearance ticket is attached. The beer was tagged and placed into evidence.

Officer Signature _____ Name and Title (print) Deputy Bill Klein #398

Officer Signature _____ Name and Title (print) Deputy Mike Myers # 405

Officer Signature _____ Name and Title (print) Austin Powers, Police Sergeant

Department Name Livingston County Police Phone # (810) 632-7179

bar) under “Doing Business As:” This name may differ from the legal name.

✍ Type of license(s) held by the licensee (e.g. “Class C”) and any permits issued (IE., “Sunday Sales” or “Dance”).

✍ A brief description of the violation you are reporting, and the specific date and time the violation was observed.

* If the violation involved a minor who was not a decoy, a copy of the appearance ticket must be attached. *

✍ All material facts of the case, including statements by the licensee, person in charge of the establishment, employees and other persons involved in the violation.

The next three items are useful, but not required:

- Name and title of the person in charge when the violations occurred, such as the bartender or store clerk.
- Name(s) of the person(s) who committed the violation, and names of any witnesses.
- Name of the person who was told that a Violation Report would be submitted to MLCC.

✍ The officer filing the violation report **must** sign it. Please include the name, address and phone number of your department. (This applies to all officers signing the

report).

[On the back of the report]

✍ Fill in the names, addresses and phone numbers of witnesses to be subpoenaed, and names of police officers who are to testify at the hearing.

✍ Write a brief statement describing the testimony you expect from each witness and officer (please do not write “see contents of this report”).

✍ Describe what evidence was obtained at the scene of the violation. Be sure to maintain your chain of evidence, and bring your evidence to the MLCC hearing.

NOTE: Any other information relevant to the case, or evidence that supports the charge that a violation of the Liquor Control Code or MLCC Administrative Rules occurred, should be included in the Violation Report or attached to it. Previous Violation Warning Notices should be noted. Please be as specific as possible.

***Under the provisions of P.A.122 of 1995, the Commission requires that every violation of Sections 436.1801, 436.1701 or R 436.1009 submitted by your department that is not the result of a decoy operation must be accompanied by a copy of the appearance ticket issued to the underage person or proof that the underage person was arrested for a criminal charge (or proof of warrant taking enforcement action). It**

WITNESSES

1. Name Bruce Ball Address 19101 Bull Run, Gregory, MI 48137 (517) 223-0711

Will testify to: Purchasing beer from licensee

2. Name Carol McCutcheon Address 1408 Alpha, Lansing MI 48910 (517) 487-3404

Will testify to: Selling beer to a minor

3. Name Deputy Bill Klein Address Livingston PD

Will testify to: Seeing minor purchase beer, talking to clerk

4. Name Deputy Mike Myers Address Livingston PD

Will testify to: Seeing minor purchase beer, talking to clerk

5. Name _____ Address _____

Will testify to: _____

EVIDENCE

Location Held: Livingston County Sheriff Department

Six-pack Budweiser beer

*** Treat any evidence seized the same as you would for a criminal hearing and bring the evidence with you.

LC-600 sample.

II. The Liquor Law & Administrative Rules

Because each case is unique, additional information may be required in reporting specific violations of the Liquor Control Code or MLCC Administrative Rules. In this section, excerpts from the law and rules have been printed that cover most commonly observed violations.

Sections from the statute or commission rules are quoted in **bold face type**, followed immediately by a reference *[in italic type with brackets]* to the Michigan Compiled Laws (MCL) or the rule from which the excerpt was taken. A copy of the laws and rules in a reference manual entitled, “The Michigan Liquor Control Code, Rules and Related Laws Governing the Sale and Manufacture of Alcoholic Beverages” may be obtained from:

MLCC Enforcement Section
P.O. Box 30005
Lansing, MI 48909
(517) 322-1370

Additional information that may be required for a complete report on specific violations is described in smaller regular type after the legal excerpt. Other suggestions for enforcement officers are printed in *italic type* preceded by a NOTE.

Most of the laws and rules included in this section apply equally to all retail licensees. However, in the sections identified as *on-premise* (such as bars, restaurants, and taverns) and *off-premise* (such as grocery and party stores), the statutes and rules that apply uniquely to those types of licensees are covered separately.

If you have any questions after reviewing this material, please contact one of the MLCC District Enforcement Offices listed at the end of this booklet.

A. Underage Persons (Minors)

Sale or giving to minors

STATE CONSTITUTION:

Section 40. A person shall not sell or give any alcoholic beverage to any person who has not reached the age of 21 years. A person who has not reached the age of 21 years shall not possess any alcoholic beverage for the purpose of personal consumption. An alcoholic beverage is any beverage containing one-half of one percent or more alcohol by volume.

[Article 4, Constitution of the State of Michigan of 1963]

STATE LAW (436.1701, 1703, 1705, 1801, 1909):

Section 801(1) As used in this section, minor means a person less than 21 years of age.

(2) A retail licensee shall not directly, individually, or by a clerk, agent or servant sell, furnish or give alcoholic liquor to a minor except as otherwise provided in this act...

(7)...In an action alleging the unlawful sale of alcoholic liquor to a minor, proof that the defendant retail licensee or the defendant's agent or employee demanded and was shown a Michigan driver's license or official state personal identification card, appearing to be genuine and showing that the minor was at least 21 years of age, shall be a defense to the action.

[MCL 436.1801]

Section 701. (1) Alcoholic liquor shall not be sold or furnished to a person unless the person has attained 21 years of age. A person who knowingly sells or furnishes alcohol to a person who is less than 21 years of age, or who fails to make diligent inquiry as to whether the person is less than 21 years of age, is guilty of a misdemeanor. A retail licensee or a licensee s clerk, agent or employee who violates this subsection shall be punished in the manner provided in Section 909. Notwithstanding Section 909 and except as otherwise provided in subsection (2), a person who is not a retail licensee or licensee s clerk, agent or employee who violates this subsection shall be fined \$1,000 and may be sentenced to imprisonment for up to 60 days for a first offense, shall be fined \$2,500 and shall be sentenced to imprisonment for up to 90 days for a second or subsequent offense, and may be ordered to perform community service. A sign which describes this section shall be posted in each room where alcoholic liquors are sold. The signs shall be approved and furnished by the Liquor Control Commission.

(2) A person who is not a retail licensee or the licensee s clerk, agent or employee and who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 10 years, or a fine of not more than \$5,000 or both, if subsequent consumption of the alcohol by the person less than 21 years of age is a direct and substantial cause of that

person's death or an accidental injury that causes that person's death.

(3) If a violation occurs in an establishment that is licensed by the commission for consumption of alcohol on the licensed premises, a person who is a licensee or the clerk, agent or employee of a licensee shall not be charged with a violation of subsection (1) or section 801(2) unless the licensee or the clerk, agent or employee of the licensee knew or should have reasonably known with the exercise of due diligence that a person less than 21 years of age possessed or consumed alcohol on the licensed premises and the licensee or clerk, agent or employee failed to take immediate corrective action.

(4) If the enforcing agency involved in the violation is the State Police or a local police agency, a licensee shall not be charged with a violation of subsection (1) or Section 801(2) unless enforcement action under Section 703 is taken against the minor who purchased or attempted to purchase, consumed or attempted to consume, or possessed or attempted to possess alcohol and, if applicable, enforcement action is taken under this section against the person 21 years of age or older who sold or furnished alcoholic liquor to the minor... However, this subsection does not apply under any of the following circumstances:

(a) The person against whom enforcement action is taken under Section 703 or the person 21 years of age

or older who sold or furnished alcohol to the minor is not alive or is not present in this state at the time the licensee is charged.

(b) The violation of subsection (1) is the result of an undercover operation...under the direction of the person's employer and with prior approval from the local prosecutor's office as part of an employer sponsored internal enforcement action.

(c) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcohol under the direction of the State Police, the commission, or a local police agency as part of an enforcement action. However, any initial or contemporaneous purchase or receipt of alcohol by the minor shall have been under the direction of the State Police, the commission, or a local police agency and shall have been part of the undercover operation.

(5) If a minor participates in an undercover operation in which the minor is to purchase or receive alcohol under the supervision of a law enforcement agency, his or her parents or legal guardian shall consent to the participation if that person is less than 18 years old.

(6) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before

furnishing alcohol to a minor, a motor vehicle operator's license or chauffeur's license or a registration certificate issued by the federal selective service, or other bona fide evidence of the age and identity of that person, shall be a defense to an action under this section. *[MCL 436.1701]*

Illegal possession by minors

Section 436.1703 (1) A minor shall not purchase or attempt to purchase, consume or attempt to consume, possess or attempt to possess alcoholic liquor, except as provided in this section (9-13). Notwithstanding section 909, a minor who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions (in Sec. 703), and is not subject to the penalties prescribed in section 909... *[MCL 436.1703]*

(2) A person who furnishes fraudulent identification to a minor, or notwithstanding subsection (1) a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor. *[MCL 436.1703]*

Detaining minors for ID

Section 705. (1) A peace officer or law enforcement officer described in section 703 or an inspector of the commission who witnesses a violation of section 703 or a local ordinance corresponding to that section

may stop and detain a person and obtain satisfactory identification, seize illegally possessed alcoholic liquor and issue an appearance ticket as prescribed in section 9b of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9b.

MLCC RULES:

Rule 1009. (1) A licensee shall not allow a person who is under 21 years of age to consume alcoholic liquor or to possess alcohol for personal consumption on the licensed premises.

Under-18 workers

(2) A licensee shall not allow any person who is less than 18 years of age to sell or serve alcoholic liquor.

(3) A licensee shall not allow any person who is less than 18 years of age to work or entertain on a paid or voluntary basis on the licensed premises, unless the person is employed in compliance with the provisions of P.A. 90 of 1978, being §409.101 et. seq. of the Michigan Compiled Laws. This subrule does not apply to an entertainer who is under the direct supervision and control of his or her parent or legal guardian.

[MLCC General Rules R 436.1009]

NOTES:

Q Requirement: Every violation of Sections 436.1801, 436.1701 or R 436.1009 submitted by your department

that is not the result of a decoy (sting) operation must be accompanied by a copy of the appearance ticket issued to the minor. It is not necessary to wait for a conviction.

/The sale or furnishing of alcoholic beverages to minors is prohibited by the Michigan Constitution and the LCC. This law applies not only to licensed retailers, but to all persons, including social hosts (although the latter are not under MLCC jurisdiction).

/Persons 18 to 21 years of age are considered legal adults and are entitled to work as bartenders, waiters/esses, and to handle, mix, sell serve and deliver alcoholic beverages as employees of licensed retailers or the Commission.

/The Michigan Court of Appeals has upheld the right of licensees to refuse admittance of a person under 21 years of age to the premises where liquor is sold. [See 139 Mich App 30 (1984), "Findling v. Dillon's."]

*/The use (or furnishing) of false identification is a misdemeanor which leads to suspension of the driver's license for 90 days upon conviction. The court shall immediately forward the surrendered license and an abstract of the conviction to the Secretary of State.
[MCL 436.1703(2)]*

/The purchase, consumption, possession or the attempt to purchase, consume or possess alcoholic beverages by

a minor is a misdemeanor punishable by fines, suspension of the driver s license, participation in community service programs and/or substance abuse prevention diagnosis and treatment services.
[MCL 436.1703]

/A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor may require the person to submit to a preliminary chemical breath analysis (CBA). A peace officer may arrest a person based in whole or in part upon the results of a CBA. The results of a preliminary CBA or other acceptable blood alcohol test are admissible in a criminal prosecution to determine if the minor has consumed or possessed alcoholic liquor. Refusal to submit to breath analysis is a state civil infraction and may order a civil fine of not more than \$100. [MCL 436.1703(7)]

/If the underage person allegedly violating this section is an unemancipated minor less than 18 years old, the parent or legal guardian of the minor must be notified within 48 hours of the offense. [MCL 436.1703 (8)]

/The MLCC is required by state law to suspend or revoke the license of any licensee who has been found to have violated Section 801(2) - on 3 or more separate occasions within a 24-month period. [MCL 436.1903]

ON THE VIOLATION REPORT:

1. List names, addresses and BIRTHDATES of all persons

under 21 years of age who were observed buying, possessing or consuming alcoholic beverages. Also list names of any persons in the company of the minor who were involved in the sales or furnishing of alcoholic beverages to the underage person, or who witnessed the transaction.

2. List documentary evidence used to determine the minor's correct age (bona fide driver's license, Law Enforcement Information Network, or other ID). **Be sure to include the date of birth of the minor in the report, place of employment and/or educational institution.**

3. If the sale or transaction was not witnessed directly by the officer, attempt to have the underage person (or those accompanying the minor) identify the establishment and the person who sold or furnished the alcoholic beverage. **This should be done as soon as possible after the minor is detained.** If feasible, compare price labels on identical or similar merchandise in the identified establishment. List all of this information on the report.

4. If the officer saw the violation, check the young person's age and documents in the presence of the licensee or employee. Report licensee's or employee's remarks.

5. Seize the alcoholic beverage purchased or possessed by the underage person, and indicate type and brand. **Be prepared to prove that the beverage the minor was drinking contained alcohol, unless it is in the original, unopened container.** List the articles confiscated to be used as evidence at the hearing.

6. Report any attempts by the minor to misrepresent age. Confiscate any false identification used.

7. Describe any means used by licensee or employee to inquire as to the age of the purchaser. **Was the buyer asked to show identification? Was ID actually shown?**

8. The Commission requires that every violation of Sections 436.1801(2), 436.1701 or Rule 436.1009 submitted by your department (except decoy (sting) operations) must be accompanied by **a copy of an appearance ticket** or warrant taking enforcement action, including those pursuant to section 436.1703(1), against the underage person. **It is not necessary to wait for a conviction.**

NOTES:

Regarding item 5 above, if a minor is observed drinking a beverage from (or poured from) a container clearly marked as an alcoholic beverage, no laboratory analysis is needed. If it is not known whether or not the beverage is alcoholic (such as “near beer”), lab analysis on a sample should be done.

Whenever an MLCC investigator charges a licensee in your jurisdiction with a violation of 436.1801(2) or 436.1701(1), your department (not MSP) will be informed of the minor’s name, address, place of employment and/or educational institution for possible enforcement action by you (except decoys).

Decoy Operations

Many community police departments, as well as the Michigan State Police, use underage persons as decoys who attempt to buy alcoholic beverages at retail establishments to see if proper identification is requested before the sale is completed.

The courts have ruled that decoy operations are legal, and do not constitute entrapment of the retailer. [See 139 Mich App,

page 471, regarding entrapment rulings.]

B. Intoxicated Persons

Sale to, loitering by

STATE LAW:

Section 1801(2) A retail licensee shall not directly, individually, or by clerk, agent or servant sell, furnish, or give alcoholic liquor to...a person who is visibly intoxicated. *[MCL 436.1801(2)]*

Section 2025(1) A vendor shall not sell any alcoholic liquor to any person in an intoxicated condition. *[MCL 436.2025]*

MLCC RULES:

Rule 1005.(1) A licensee shall not sell, serve or furnish alcoholic liquor to a person who is in an intoxicated condition.

(2) A licensee shall not allow a person who is in an intoxicated condition to consume alcoholic liquor on the licensed premises.

(3) A licensee, or clerk, servant, agent, or employee of a licensee, shall not be in an intoxicated condition on the licensed premises.

(4) A licensee shall not allow an intoxicated person to frequent, or loiter on, the licensed premises. *[R 436.1005]*

NOTES:

/ The critical factor is the outward appearance and conduct of a patron or other intoxicated person, plus corroborating witnesses who can state that a person was visibly intoxicated on the licensed premises at the time of the sale or consumption of alcoholic liquor.

/ The MLCC is required by state law to hold a hearing and suspend or revoke the license of any licensee who has been found to have violated Section 801(2) - selling or serving alcohol to underage or intoxicated persons - on three or more occasions within a 24-month period.
[436.1903(1)]

ON THE VIOLATION REPORT:

1. The specific charge should explain if the violation was a sale to an intoxicated person, allowing an intoxicated person to consume, loiter, etc.
2. The intoxicated person's name and address, place of employment and/or educational institution is needed, as well as an explanation of whether the intoxicated person was a customer, an employee of the establishment, the licensee or someone else.
3. Describe the person's actions and appearance that led to the determination of visible intoxication.
4. Describe the means of proving that the beverage served was an alcoholic liquor ; describe sample or evidence seized, container poured from, and results of laboratory analysis. Also, identify who served the intoxicated person. If charge is loitering, state length of time person was observed (minimum

of 10 minutes is suggested).

5. List the names, addresses, phone numbers, places of employment and/or educational institution of any witnesses who saw the intoxicated person served, consume alcoholic beverages, or be allowed to loiter on the premises.

C. Hours of Sales

Hours, Sunday sales, permits

STATE LAW:

Section 1113. (1) Except as provided in subsection (2), (3), or (5), a licensee enumerated under section 525 or any other person shall not sell at retail, give away, or furnish and a person shall not knowingly and willfully buy spirits or mixed drinks between the hours of 2 a.m. and 12 midnight on Sunday. If January 1 falls on Sunday the hours may be extended to 4a.m. for on-premise licensees.

(2) If the legislative body of a county has authorized the sale of spirits and mixed spirit drink for consumption on the premises on Sunday ... the spirits and mixed spirit drink may be sold after 12 noon in an establishment licensed under this act in which the gross receipts derived from the sale of food and other goods and services exceed 50% of the gross receipts.

(3) If the legislative body of a county has authorized the sale of spirits and mixed drinks for consumption off the premises on Sunday ... spirits and mixed spirit

drink may be sold after 12 noon in a retail establishment licensed under this act.

(5) A licensee enumerated under this section 525 or any other person shall not sell at retail, and a person shall not knowingly and willfully buy, alcoholic liquor between the hours of 9 p.m. on December 24 and 7 a.m. on December 26. If December 26 falls on Sunday the hours of closing shall be determined pursuant to the Code. The legislative body of a city, village, or township, by resolution or ordinance, may prohibit the sale of alcoholic liquor on Sunday or a legal holiday, primary, general or municipal election day.

[436.2113]

MLCC RULES:

The administrative rules are more specific on the hours of operation, but are separate and distinct for on-premise and off-premise licensees. The rules are very lengthy - particularly for on-premise licensees. Therefore, we have condensed these rules into the following table to simplify their understanding and application. For the precise language of the rules, refer to The Michigan Liquor Control Code, Rules, and Related Laws book available from MLCC.

Summary of hours

ALL LICENSEES (on-premise, off-premise, hotels, clubs, special licensees, etc.) **are prohibited from selling alcoholic beverages between the hours of:**

2 a.m. and 7 a.m. of any day
(except January 1 as noted below).

2 a.m. and 12 noon on Sundays.
(The sale of spirits or mixed spirits is allowed between noon and midnight only with a Sunday Sales Permit - see first NOTE below.)

9 p.m. on December 24 (Christmas Eve) **and 7 a.m. December 26.***

4 a.m. and 7 a.m. on January 1 (New Years Day) **for on-premise licensees only.***
(Off-premise licensees must stop selling alcoholic beverages at 2 a.m. Jan. 1)

*Sunday rules apply if the dates fall on Sunday.

In addition, on-premises licensees may not allow consumption of alcoholic beverages on the premises after:

2:30 a.m. on any day,
9:30 p.m. on December 24, or
4:30 a.m. on January 1.

NOTES:

There are three distinct types of violations regarding hours of operations: 1) Sale at other than legal hours; 2) Consumption at other than legal hours; and 3) Premises occupied other than legal hours. Sundays and holidays are governed by specific rules.

A separate **Sunday Sales Permit** must be obtained by the licensee from the MLCC to allow the sale of spirits and mixed spirit drinks between noon and midnight on Sundays. The MLCC will not issue the Sunday Sales Permit if the county government has not approved Sunday sales or if the local government has prohibited the sale of spirits or mixed spirit drinks on Sunday.

Beer and wine may be sold after noon on Sundays **without a Sunday Sales Permit** unless prohibited by the local government.

On-Premise Licensees

Patrons, guests and others not employed by the on-premise licensee must leave the premises by 2:30 a.m. daily (including Christmas Eve) and by 4:30 a.m. on January 1. **EXCEPTION** - Businesses such as restaurants, bowling alleys and ski lodges may be granted permission by MLCC to remain open at other times, but not to sell alcoholic beverages. For example, a restaurant may be allowed to continue serving meals, but not alcoholic drinks, after 2 a.m.

Off-Premise Licensees

May remain open for business after the legal hour for

sale of alcoholic beverages provided that they do not sell alcoholic beverages during the prohibited time periods. For example, after 2 a.m. a party store may continue selling groceries, but not alcoholic beverages.

ON THE VIOLATION REPORT:

1. Establish the exact time of the violation by checking with radio, telephone, or other source of official time. Note exact time of violation on the report.
2. Seize the alcoholic beverage sold or being consumed. List on the report the type and brand of beverage, determine that an open drink contains alcohol by smelling and/or laboratory analysis (not necessary if beverage is in a closed container), and state amount paid for the alcoholic beverage.
3. List name, address, place of employment and/or educational institution of person(s) consuming alcoholic beverages, to whom the sale was made, or who was occupying premises after hours. Also list name of person making the sale or serving after hours, and identify each name as a customer, working employee, licensee, or nonworking employee. List name of person in charge of establishment at the time of the violation.
4. Note whether the violation is based upon observation or personal purchase by reporting officer.

D. Prohibited Conduct **- All licensees -**

MLCC ADMINISTRATIVE RULES:

Annoying, soliciting, fighting

Rule 1011. (5) A licensee, or the clerk, servant, agent, or employee of the licensee, shall not:

(a) Allow, on the licensed premises, the annoying or molesting of customers or employees by other customers or employees.

NOTE:

Simple and aggravated assaults on the premises should be reported under this rule [Rule 1011].

(b) Knowingly allow the licensed premises to be used by any person for the purposes of accosting or soliciting another person to commit prostitution.

(c) Allow, on the premises, fights, brawls, or the improper use of firearms, knives, or other weapons.

Narcotics, gambling

(d) Allow the sale, possession, or consumption on the licensed premises of any controlled substances which are prohibited by PA 368 of 1978, as amended, being §333.1101 et. seq. of the Michigan Compiled Laws.

(e) Allow narcotics paraphernalia to be used, stored, exchanged, or sold on the licensed premises. [MLCC

Rule R 436.1101]

Rule 1013. (1) A licensee shall not allow unlawful gambling on the licensed premises.

(2) A licensee shall not allow and gambling devices on the licensed premises which are prohibited by the statutes of this state. [R 436.1013]

NOTE: *There are three criteria needed to establish gambling : **consideration** (money required to participate), **chance** (where luck, not skill, determines the winner), and **prize** (money or other thing of value). Football pools are gambling, and the pool sheets are gambling devices, for example.*

<i>Sale of unauthorized liquor</i>

Rule 1017. (1) A licensee shall not sell, offer or keep for sale, furnish, possess, or allow a customer to consume, alcoholic liquor which is not authorized by the license issued to the licensee by the commission.

NOTE: *An example of a Rule 1017(1) violation would be for a tavern owner (who is licensed to sell beer or wine of 21% or less alcohol content) to serve or allow customers to bring in and consume spirits (with more than 21% alcohol content).*

<i>Sales to unauthorized sellers</i>

(2) A licensee shall not knowingly sell or furnish alcoholic liquor to a person who maintains, operates, or leases premises which are not licensed by the commission and upon which other person(s) unlawfully engage in the sale or consumption of alcoholic liquor for a fee or other valuable consideration. [MLCC General Rule R 436.1017]

NOTE: An example of a Rule 1017(2) violation would be for a party store clerk to sell and deliver a keg of beer to a college fraternity house which was advertising a beer bust and charging \$2 admission, and serving underage persons - all without a liquor license. One way to establish that the licensee knew in advance that it was a violation would be for a local law enforcement officer to warn the party store licensee not to sell alcoholic beverages to the fraternity that was promoting the event.

ON THE VIOLATION REPORT:

1. The charge should be specific and should state the exact violation(s) observed, such as fighting by customers, sale of drugs, soliciting for prostitution, etc.
2. List names, addresses, places of employment and/or educational institution of all persons involved in the prohibited activity including perpetrators and victims. Specify how each person was involved.
3. Note the date and time of the violation(s).
4. Indicate any evidence that the licensee or employees knew (or should have known) the violation was occurring. If similar

violations have happened before at this establishment, list dates and circumstances of each previous occurrence as well as any prior warnings given to the licensee or staff.

5. If the charge is accosting or soliciting, include price asked and nature of the illegal act to be performed.

6. If the charge is fighting, note involvement of licensee or employees (either as participants in the improper conduct or any attempt or lack of effort to control the fighting).

7. If gambling is observed, seize any illegal gambling devices used and list these items on the report. Also seize all money involved in the gambling, and any proof of gambling.

8. Summarize any criminal proceedings that result from the violations. List upcoming court dates and include certified copies of any case dispositions.

D. Prohibited Conduct (continued)
- On-premise licensees -

STATE LAW:

Section 1019. Alcoholic liquor may be served by any hotel licensed individually under the provisions of this act in the room of a bona fide guest. Spirits or mixed spirit drinks shall not be consumed in any place licensed under this act to sell beer or wine but not licensed to sell spirits or mixed spirit drinks.

[436.2019]

<i>Removing drinks</i>

Section 1021(2). Alcoholic liquor sold by vendors for consumption on the premises shall not be removed therefrom. [436.2021]

MLCC RULES:

<i>Dance-entertainment permits</i>

R 1407.(1) An on-premise licensee shall not allow dancing, monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing on the licensed premises, unless the on-premise licensee has been granted an entertainment or dance-entertainment permit by the commission. This rule does not prohibit orchestra, piano or the playing of other types of musical instruments, or singing. This prohibition does not apply to any publicly broadcast television transmission from a federally licensed station.

(2) An on-premise licensee shall not allow dancing by customers or by customers and employees on the licensed premises, unless the on-premise licensee has been granted a dance or dance-entertainment permit by the commission and only on the clearly marked dance floor.

(3) An on-premise licensee shall not allow activities permitted by a dance, dance-entertainment, or entertainment permit at times other than the legal hours for sale and consumption of alcoholic liquor. [R 436.1407]

Nudity

Rule 1409. (1) An on-premise licensee shall not allow in or upon the licensed premises a person who exposes to public view the pubic region, anus, or genitals or who displays other types of nudity prohibited by statute or local ordinance.

(2) An on-premise licensee shall not allow in or upon the licensed premises the showing of films, television, slides or other electronic reproductions which depict scenes wherein any person exposes to public view the pubic region, anus, or genitals or displays other types of nudity prohibited by statute or local ordinance. This prohibition does not apply to any publicly broadcast television transmission from a federally licensed station. [MLCC On-premise Rules R 436.1409]

Sex acts

Rule 1411.(1) An on-premise licensee shall not allow in or on the licensed premises a person who performs, or simulates performance of, sexual intercourse, sodomy, masturbation, bestiality, fellatio, or cunnilingus.

(2) A on-premise licensee shall not allow in or upon the licensed premises the showing of films, television, slides or other electronic reproductions which depict scenes wherein a person performs, or simulates

performance of, sexual intercourse, masturbation, sodomy, bestiality, fellatio, or cunnilingus. This prohibition does not apply to any publicly broadcast television transmission from a federally licensed station. [MLCC On-premise Rules R 436.1411]

*/NOTE: Rules 1407, 1409 and 1411 normally **do not apply** to televised broadcasts such as those carried on the networks and transmitted to the general public free of charge. However, the rules **do apply** to programming obtained via purchased cable hookup, satellite dish antennae or other special receiving equipment, as well as to films, videos or slide shows.*

Soliciting drinks

Rule 1417.(1) An on-premise licensee shall not allow a person who is engaged in the serving of food or alcohol to eat, drink, or mingle with the customers.

(2)(3) An on-premise licensee, or the clerk, servant, agent or employee of an on-premise licensee, shall not solicit a customer for the purchase of alcoholic liquor (or allow a customer to solicit) for him/herself or for any other person. [On-premise Rules R 436.1417]

2-for-1 sales

Rule 1438. (1) An on-premise licensee shall not sell, offer to sell, or advertise the sale of, an unlimited

quantity of alcoholic liquor at a specific price.

(2) No licensee shall sell, offer to sell, or advertise the sale of, 2 or more identical drinks containing alcoholic liquor to a person for their consumption for 1 price. When 2 or more identical drinks containing alcoholic liquor are served to a person at 1 time, the price charged for the second drink shall be the same price as for the first drink. [On-premise Rules R 436.1438]

ON THE VIOLATION REPORT:

1. Specify exactly how a statute or administrative rule was violated.
2. Include name(s), address(es), place(s) of employment and/or educational institution(s) of person(s) violating the Code or rules.
3. If a local ordinance is used for the citation, attach a copy of the ordinance and a copy of the conviction to the violation report.
4. If electronic reproduction is the basis for the citation, seize the tapes, films, etc. as evidence. Electronic equipment used for reproduction should be seized only if necessary as evidence for the violation hearing.

NOTE: *The MLCC does not enforce local ordinances (see Report item 3 above). A conviction of a violation of a local ordinance must be obtained before citing the licensee before the commission (unless state law or MLCC rules are ALSO*

violated simultaneously).

D. Prohibited Conduct (continued)

- Off-premise licensees -

MLCC RULES:

<i>Open containers, consumption</i>

Rule 1511. (1) An off-premise licensee who is not licensed as an on-premise licensee shall not have open containers of alcoholic liquor on the premises except for a defective or sample bottle or can.

(2) An off-premise licensee who is not licensed as an on-premise licensee shall not allow the consumption of alcoholic liquor on the licensed premises, except for the consumption of the contents of sample bottles or cans. Only an off-premise licensee, or the clerk, servant, agent or employee of the off-premise licensee, may consume the contents of sample bottles or cans on the licensed premises. [Off-premise Rules R 436.1511]

Rule 1523. (1) An off-premise licensee shall not give bottle or can openers to purchasers and shall not open bottles or cans of alcoholic liquor for purchasers on the licensed premises.

(2) An off-premise licensee shall not knowingly allow a person to consume alcoholic liquor on property owned, leased, or possessed by the licensee adjacent to the licensed premises. [Off-premise Rules R

436.1523]

Delivery to minors

Rule 1527 An off-premise licensee shall not make a delivery of alcoholic liquor to any person under 21 years of age. *[MLCC Off-premise Rules R436.1527]*

Rule 1011. (6) A retail licensee shall not sell any alcoholic liquor off the licensed premises except for:

(b) An off-premise licensee may deliver a pre-ordered quantity of alcoholic liquor; however, a delivery shall not be made to any customer on the campus of any college or university unless the customer is licensed by the commission. *[MLCC General Rules R 436.1011]*

ON THE VIOLATION REPORT:

1. Indicate where, when and what type of alcoholic beverage was being consumed or delivered.
2. List any physical evidence seized (such as opened or unopened containers, or samples analyzed).

E. Other Requirements

- All licensees -

STATE LAW:

Premises inspection

Section 217(2) A licensee shall make the licensed premises available for inspection and search by a commission investigator or law enforcement officer empowered to enforce the commission s rules... during regular business hours or when the licensed premises are occupied by the licensee or a clerk, servant, agent or employee of the licensee. Evidence of a violation discovered pursuant to this subsection may be seized and used in an administrative or court proceeding. [MCL 436.1217]

NOTE: For purposes of the MLCC hearing process, a search warrant is not needed for entry on the premises (for enforcement of LCC and Rules) of a licensed liquor establishment during hours when it is open to the public, or when premises are occupied by the licensee or employee. Enforcement officers should however, consult their local prosecutors regarding the need to obtain a search warrant if criminal prosecution is anticipated.

MLCC RULES:

<i>Illegal acts, owner convicted</i>

Rule 1011. (1) A licensee, or the clerk, servant, agent, or employee of a licensee, shall not engage in an illegal occupation or act on the licensed premises. A copy of a conviction shall be prima facie evidence of a violation.

(2) If a licensee, an officer of a licensed corporation,

or a stockholder of a privately held corporation or a member or manager of a Limited Liability Company is convicted of a felony, or a crime involving moral turpitude or excessive use of alcoholic liquor, or sentenced after a plea of nolo contendere in connection with the foregoing, the licensee shall be subject to the penalties in section 1903. A certified copy of a conviction shall be prima facie evidence of a violation.

NOTE: *The above rule includes convictions of **any** felony - not just a crime related to the retail business or to alcoholic beverages. However, licensees convicted of alcohol related traffic violations may be reported as rule violations as well.*

<i>Cooperation with officers</i>

(3) A licensee, or clerk, servant, agent or employee of the licensee, shall not hinder or obstruct a law enforcement officer or commission inspector or investigator in the course of investigating or inspecting the premises and shall not refuse, fail or neglect to cooperate with a law enforcement officer, commission inspector or investigator in the performance of his or her duties to enforce the act or commission rules. [MLCC General Rules R436.1011]

NOTE: *Due to the seriousness with which this charge is treated by the MLCC, it is advised that Rule 1011 be applied only in those instances where there is direct and deliberate interference with the officer's attempt to obtain evidence or information necessary to enforce the LCC or Rules.*

*(Examples would include pushing or blocking movement of an officer outside or inciting customers to threaten an officer.)
This charge should not be made when the lack of cooperation occurs as a result of a criminal investigation not related to the Liquor Control Code or MLCC Rules.*

Display of license, permits

Rule 1015. (1) Licenses issued by the commission shall be signed by the licensee, shall be framed under transparent material, and shall be prominently displayed in the licensed premises.

(2) Permits issued by the commission to a licensee shall be framed under transparent material, and displayed prominently in the licensed premises adjacent to the liquor license. [MLCC General Rules R 436.1015]

Suspension of license

Rule 1031. (1) A licensee shall not sell, offer for sale, furnish, consume, or allow the consumption of, alcoholic liquor on the licensed premises during the period that the license is suspended by the commission or an individual commissioner.

(2) During the time of suspension of a license by the commission, the notice of the suspension shall be continuously posted in a conspicuous place on the licensed premises in full view of the public.

[MLCC General Rules R 436.1031]

Rule 1061. Any permit issued to a licensee by the commission or any privilege granted to a licensee by the commission may be revoked or suspended by the commission or a hearing commissioner, after due notice and proper hearing, if the licensee or establishment no longer qualifies for the permit or the privilege or if the licensee is found to be in violation of the act or a commission rule which directly pertains to the permit issued or the privilege granted.

[MLCC General Rules R 436.1061]

F. Contests & Tournaments

MLCC RULES:

<i>Prizes, alcohol use</i>

Rule 1019. A licensee shall not participate in or sponsor any contest that requires the use or consumption of alcoholic liquor or features alcoholic liquor as a prize in connection with a contest.

[MLCC General Rules R 436.1019]

NOTE: *Non-profit unlicensed persons, holders of special (24-hour) licenses, and club licensees ONLY are allowed to offer and award unopened alcoholic liquor valued at less than \$200 in a drawing, raffle or as a door prize. Under provisions of 436.2015 (Section 1015), these exceptions are permitted provided the liquor is awarded to someone 21 years old or greater, not intoxicated, and the award is made at a lawful*

fund-raising activity. The alcoholic beverage cannot be consumed on the premises where awarded.

Rule 1435. (1) An on-premise licensee shall not allow contests in which the licensee or other person gives away anything of value in excess of \$50, except upon written order of the commission, and shall not accept or retain anything of value from a person in exchange for sponsoring or promoting a contest or tournament.

(2) An on-premise licensee shall not allow a contest or tournament of any kind in which the sale, use, or consumption of alcoholic liquor is a part of the contest or tournament or in which alcoholic liquor is given as a prize to participants in the contest or tournament.

(3) An on-premise licensee shall not allow a promotion on the licensed premises in which anything of value is given away without adequate and appropriate consideration, except as provided in this rule or upon written order of the commission, and shall not accept or retain anything of value from a person in exchange for sponsoring a promotion, except upon written order of the commission. [MLCC R 436.1435]

NOTE: *An on-premise licensee is required to have an ENTERTAINMENT PERMIT to hold a contest.*

G. Special Licenses

STATE LAW:

<i>Definitions</i>

Section 1111(10). Special license shall mean a contract between the commission and the special licensee granting authority to said licensee to sell beer, wine, mixed spirit drink, or spirits. The license shall be granted only to such persons and organizations and for such period of time as the commission shall determine. *[MCL 436.1111(10)]*

Section 527 (1) The commission may issue a special license as defined in section 2o to a nonprofit charitable organization that is exempt from payment of taxes under the Internal Revenue Code for the purpose of allowing the organization to sell, at auction, wine donated to the organization.

(2) A special license issued pursuant to subsection (1) shall be nontransferable. The organization applying for the special license shall pay the fee required under section 525 (1) (r).

(3) An auction permitted under subsection (1) may occur upon premises which are otherwise licensed under this act to allow the sale of alcoholic liquor for consumption on the licensed premises.

[MCL 436.1527]

/NOTE: *The special license (also called a 24-hour*

license) may only be issued to a nonprofit religious, fraternal, civic or patriotic organization, and only five days per year to any one organization including its auxiliaries. The same rules and regulations that apply to other licensees also govern special licensees (such as hours of operation, and no sale to minors or intoxicated persons). Local law enforcement officials must approve the issuance of each special license.

III. General Information

This section includes violations (and penalties for violations) of the Liquor Control Code which (with one exception) are not covered by the MLCC hearings process because they do not involve licensed manufacturers, wholesalers, or retailers of alcoholic beverages. Nevertheless, violators of these sections of the LCC should be considered liable for prosecution through the courts.

A. Penalties for LCC violations

STATE LAW:

<i>Penalties</i>

Section 1909(1). Penalties. A person, other than one(s) required to be licensed under this act, who violates any provisions of this act is guilty of a misdemeanor.

NOTE: *The above entry applies only to persons who are*

not required to be licensed by the MLCC statute.

(2) A licensee who violates any of the provisions of this act, or a rule or regulation promulgated hereunder, is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months or by fine of not more than \$500 or both, at the discretion of the court.

NOTE: The above section applies to licensees who violate the LCC or MLCC rules (such as by selling alcohol to a minor, or by selling alcohol after legal closing hours). These penalties are invoked in Circuit District or Recorder's Court proceedings. Licensees also face penalties before the MLCC.

Section 909(3) A person who performs any act for which a license is required under this act, without first obtaining said license or who sells alcoholic liquor in a county which has prohibited the sale of alcoholic liquor under section 1107, is guilty of a felony punishable by imprisonment for not more than 1 year or by a fine of not more than \$1,000, or both.

(4) It is the intent of the legislature that the court, in imposing punishment under this section, should discriminate between casual or slight violations and habitual sales of alcoholic liquor or attempts to commercialize violations of this act or the rules or regulations of the commission promulgated hereunder. [MCL 436.1909]

NOTE: The above section deals with sales of alcoholic beverages without a license.

Section 913(1) A person shall not maintain, operate, lease, or furnish to any person, any premises or place which is not licensed under this act, where the other person may engage in the drinking of alcoholic liquor for consideration.

(2) A person shall not consume alcoholic liquor in a commercial establishment selling food if the commercial establishment is not licensed under this act. A person owning, operating, or leasing an establishment selling food which is not licensed under this act shall not allow the consumption of alcoholic liquor on its premises.

(3) This section shall not apply to any hotel or any licensee under this act.

(5) As used in this section, consideration includes any fee, cover charge, the storage of alcoholic liquor, the sale of food, ice, mixers, or other liquids used with alcoholic liquor drinks, or the furnishing of glassware or other containers for use in the consumption of alcoholic liquor in conjunction with the sale of food. [MCL 436.1913]

NOTE: It is suggested that law enforcement officers check with their local prosecutors about enforcement of Section

913 of the MLCC.

B. Law Enforcement Interest

STATE LAW:

<i>Prohibits ownership</i>

Section 523 (1) A person who holds or whose spouse holds, either by appointment or election, a public office that involves the duty to enforce US penal laws, or penal laws of this state, or penal ordinance or resolution of a municipal subdivision of the state, except civil defense volunteer police, mayors or council members of cities, village presidents, or mayors of home rule cities whose law enforcement authority is restricted to emergency situations, shall not be issued a license, or have an interest, directly or indirectly in a license if the activity regulated by the license occurs in the same local unit of government within which the person enforces those state or local penal laws... This subsection does not apply to a spouse of an elected or appointed official ... if the spouse held a license or interest in a license for not less than 3 years before marrying the official or if

the spouse has voting rights in a public or private club holding the license. However, a nonprofit fraternal organization incorporated under the laws of this state, whose membership is not totally composed of enforcement personnel or public office holders charged with the duty of enforcing any penal laws or ordinances of a governmental body, may be issued a club license if the organization is otherwise qualified.

(2) As used in this section, law enforcement personnel does not include the mayor of a city. [MCL 436.1523]

C. Import of Alcoholic Liquor into Michigan

STATE LAW:

<i>Limits amount</i>

Section 203. (1) Except as provided in this section and section 301, a sale, delivery, or importation of alcoholic liquor, including alcohol for personal use, shall not be made in this state unless the sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, a person licensed by the commission, or by prior written order of the commission...

(2) Notwithstanding the provision of subsection (1) a person who is of legal age to purchase alcoholic liquor may import from another state for that person's personal use not more than 312 ounces of alcoholic liquor which contains less than 21% alcohol by volume. [MCL 436.1203]

NOTE: *This section of the LCC exempts one liter of alcoholic liquor (spirits) acquired outside the territorial limits of the United States and brought into Michigan for personal or household use, as long as federal requirements are met.*

NOTES

NOTES

FOR MORE INFORMATION

If you have any questions, need additional information, or want clarification on a subject covered in this booklet, please contact one of the following MLCC Enforcement Division District Offices:

Escanaba (906) 786-5553

Gaylord (517) 732-6797

Grand Rapids (616) 942-9233

Lansing (517) 322-1370

Lincoln Park (313) 389-9710

Normal work hours at these MLCC offices are 8:00 a.m. to 4:30 p.m (8:30 a.m. to 4:30 p.m. at Lincoln Park), Monday through Friday (except holidays).

QUICK REFERENCE

Minors	See page 8-12
Intoxicated persons	18-19
Hours of sales	22
Prohibited Conduct	
Fighting	25
Drugs, Gambling	25
Nudity	30
Soliciting drinks	31
Cooperation with officers	36
Contests & Tournaments	38
Special licenses	39

[See Table of Contents for details]

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